

sub-section in question is concerned, but it is the actual contracting of debts to which it applies. Once this is conceded it follows that it is individual transactions with creditors which must form the basis of charges under the sub-section, and it would be unfair that when the culpability or otherwise of the bankrupt depends on his conduct in respect of individual transactions he should be confronted in a single charge with a multiplicity of such transactions.

For these reasons it seems to me the Official Assignee's argument is not sustainable, but, apart from these reasons in so far as they are not covered by the cases I have cited, I respectfully agree with the authorities I have quoted, whether *Re Chops Low Ban Chuan and Chuan Bee etc.*⁽¹⁾ should be regarded as having the weight of a Court of Appeal decision on this point or not.

On these grounds I uphold Mr. Macassey's objection to the main charge.

Order accordingly.

Solicitors: *Battenberg & Talma.*

Re YEO JIN GUAT (No. 2)

[O. C. J. (Whitton J.) May 26, 1954]

[Singapore—Bankruptcy No. 85 of 1952]

Bankruptcy Ordinance (Cap. 45), ss. 114 and 128—Motion to commit bankrupt—Procedure—Whether statement of affairs must be exhibited with affidavit—Bankruptcy Rules.

This was a motion to commit a bankrupt under the provisions of s. 114 of the Bankruptcy Ordinance. It was contended on behalf of the bankrupt that the statement of affairs of the bankrupt should have been exhibited to the affidavit of the Official Assignee.

Held: it is not mandatory on the Official Assignee to exhibit the statement of affairs to the affidavit.

Case referred to:—

- (1) *Re Mohamed Yusoff Meera Hussein & Anor* (1954) M.L.J. 45.

BANKRUPTCY.

N. L. Macassey for the bankrupt.

W. G. Alcock, Official Assignee in person.

Cur. Adv. Vult.

Whitton J. :—The first of Mr. Macassey's further objections is that the statement of affairs should have been exhibited to the Affidavit and has not been. In support of this objection he relies on Rules, 14, 15, 16, 18 and 273 of the Bankruptcy Rules and on the recent Penang decision in *Re Mohamed Yusoff Meera Hussein & Anor.*⁽¹⁾ Now the effect of Rule 273 as far as

proceedings under section 114 are concerned is clearly that the Official Assignee must follow the normal procedure required in applications under the Bankruptcy Ordinance, that is he must make his application by motion supported by affidavit. The question to be decided now is whether this procedure makes it imperative for the Official Assignee to exhibit the statement of affairs to the affidavit. None of the Rules cited specifically say that he must. Mr. Macassey argues, however, that in the light of the decision in *Re Mohamed Yusoff Meera Hussein*⁽¹⁾ it is necessary for the statement of affairs to be exhibited. Even if it is conceded for the sake of argument that the same considerations apply in this connection to a statement of affairs as apply to the notes of a public examination, the failure to exhibit which occasioned that part of judgment in *Re Mohamed Yusoff Meera Hussein*⁽¹⁾ Mr. Macassey now relies on, it is important to observe that Spenser Wilkinson J. expressed the view that the question involved was not one of invalidating any proceedings but rather one whether there was evidence before the Court upon which it could act. To quote the relevant passage:—

"Section 128 is very wide in its terms, but I do not think it really assists the Official Assignee in this case. It provides that no proceeding in bankruptcy shall be invalidated by any formal defect or irregularity. I do not think, however, that there is any question here of invalidating any proceedings; it is a question rather as to whether or not there was evidence before the Court upon which it could act."

The case cannot therefore be taken as authority for the proposition that the proceedings are invalidated—and that is the point I am concerned with at the moment—by omission to exhibit the notes of the public examination to the affidavit. I hold, accordingly that there is no authority before me which justifies a ruling that it is mandatory on the Official Assignee to exhibit the statement of affairs to the affidavit, and this objection must in my view fail. I do not wish, however, by this decision to be taken as considering it is not necessary if the Official Assignee proposes to rely on the statement of affairs in support of the motion for him to give due and adequate notice of the fact to the bankrupt.

Mr. Macassey's next objection is that the third schedule to the affidavit was not served on him until the 13th May, that is two days before the Motion came before the Court, and that, accordingly, Rule 16 of the Bankruptcy Rules was not complied with. It is not disputed that as the result of an error the schedule in question was not served until the 18th May, and that in fact what happened was that previously a document wrongly purporting to be the third schedule was served on Mr. Macassey. The Official Assignee submits that the matter can be cured

by Section 128 of the Ordinance, and in reply to this submission Mr. Macassey says that this section has no application to non-service. In the absence of any statutory definition as to what is a proceeding in bankruptcy it seems to me that the service of an affidavit in support of a motion is very much part of a proceeding, and I hold that this matter comes within the scope of Section 128. The position then is that the omission to serve the schedule properly will not invalidate the proceeding "unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court." Mr. Macassey does not contend that any injustice which cannot be remedied by the Court has occurred, and therefore I hold that this objection also must fail. I feel it desirable to say, however, that errors of this sort should not occur. I appreciate the matter is a complicated one, but that is all the more reason for the exercise of a degree of care which would prevent error—at least an error of this type.

Mr. Macassey's third objection is that the affidavit does not comply with the rules of evidence, particularly these relating to hearsay. In support of this objection he refers to the fourth paragraph which reads "partly from information given to me by the bankrupt and partly from investigation of the bankrupt's affairs I believe the following to be true." Now while I concede that in a quasi-criminal proceeding of this nature the allegations against the bankrupt must, if they are to succeed, be proved strictly by the methods of proof prescribed by the Evidence Ordinance, I think Mr. Macassey's objection is, at least, premature. It may be that part of the information given to Mr. Alcock by the bankrupt would amply support the surviving charge. I agree that in view of the wording of the fourth paragraph the possibility of hearsay must not be overlooked, but I think the correct method for testing the evidential value of the affidavit should be cross-examination of Mr. Alcock in the witness box. For this reason I think this objection also must fail.

Order accordingly.

Solicitors: *Battenberg & Talma.*

Re YEO JIN GUAT (No. 3)

[O. C. J. (Whitton J.) June 19, 1954]

[Singapore — Bankruptcy No. 85 of 1952]

Bankruptcy Ordinance (Cap. 45), s. 114(c) — Motion to commit bankrupt — Whether bankrupt had reasonable ground of expectation of being able to pay debt.

This was a motion to commit a bankrupt under the provisions of s. 114 of the Bankruptcy Ordinance, the charge being that he on the 20th of May 1952 contracted a debt of \$11,458 due to Montor Ltd., Singapore without any reasonable ground of expectation of being able to pay it. The Official Assignee proved that at the date the bankrupt contracted the debt, he had in fact liabilities very many times exceeding the amount of this debt and also much exceeding his existing assets at that date. In reply it was contended on behalf of the bankrupt that as at the time the debt was contracted, the bankrupt had assets exceeding \$400,000 it could not be said that he contracted the debt without any reasonable ground of expectation of being able to pay it.

Held: the contention of the bankrupt must be upheld and therefore the motion must be dismissed.

Case referred to:—

(1) *Re Chan Leong Whatt* (1910), 12 S.S.L.R. 32.

MOTION to commit Bankrupt.

N. L. Macassey for the bankrupt.

W. G. Alcock, Official Assignee in person.

Whitton J. (delivering oral judgment):—The charge at present before the Court is that the bankrupt contracted on the 20th May 1952 a debt of \$11,458 due to Montor Limited of the Arcade Building, Raffles Place, Singapore, without any reasonable ground of expectation of being able to pay it, and thereby committed an offence punishable under section 114(c) of the Bankruptcy Ordinance, Chapter 45.

Now, the Official Assignee has shown to my satisfaction that at the date the bankrupt contracted this debt, he had in fact liabilities very many times exceeding the amount of this debt and also much exceeding his existing assets at that date. This evidence, in my view, *prima facie* establishes the case in support of the Official Assignee's motion.

In reply to this case, the Defence puts forward two main grounds; the first is that if the correct view of what for convenience I shall call interest and appropriation aspects of the debts is applied to the bankrupt's situation, the debtor, in view of his admitted assets, was not in fact really insolvent at all. The second ground put forward by Mr. Macassey for the defence is that as the Official Assignee concedes that at the date the debt was contracted the bankrupt had assets exceeding \$400,000 and therefore was clearly in a position to pay this particular debt of \$11,000 odd, it cannot be said he contracted this debt without any reasonable ground of expectation of being able to pay. To put the matter shortly, he suggests that a man who has assets amounting to something in the nature of \$400,000, whatever his liabilities at that date may be, cannot be said to have had no reasonable ground of expectation of being able to pay a debt of \$11,000 odd.